

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1601

Introduced by Senator Lowenthal

February 24, 2006

An act to add Section 40724.8 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1601, as amended, Lowenthal. ~~Marine~~*Air pollution: marine ports: emissions.*

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law also designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution. Existing law imposes certain restrictions on truck idling at marine terminals and ports.

This bill would require a marine port, *as specified*, to require, as an express condition of any approved new lease or significantly renegotiated existing lease, as defined, that the lessee use best available control technology (BACT) to reduce particulate matter (PM) and nitrous oxide (NOx) emissions from specified source categories. The bill would require a marine port, if, despite compliance with the above, NOx or PM emissions at a marine port continue to increase, to require as an express condition of the lease that the lessee offset any increase with a further reduction in emissions of the same pollutant from operations at the leased property or from other emissions sources at the marine port that are not otherwise

required by the bill to be reduced through the use of BACT. *This bill would require, on or before June 1, 2007, the state board to provide guidance to each port and its lessees regarding what constitutes BACT by developing BACT guidelines, as specified.* ~~The bill would require, on or before June 1, 2007, each district having jurisdiction over the area in which a marine port is located to develop and publish, in consultation with state board, BACT guidelines aimed at reducing PM and NOx emissions from the specified source categories, and to determine what measures constitute BACT for each source. The bill would require each district, for every year thereafter, in consultation with the state board, to update its BACT determinations for each source category. The bill would require each district, upon adoption of any BACT determination, to submit the determination to the state board for approval. The bill would require the state board to take action upon the BACT determination within 60 days of the date of submission.~~

By imposing new duties on ~~districts~~ *local governmental entities that operate ports*, this bill would impose a state-mandated local program.

(2)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature hereby finds and declares all of*
- 2 *the following:*
- 3 (a) *Air pollutants from diesel engines at marine ports can*
- 4 *significantly affect human health.*
- 5 (b) *Exhaust fumes from diesel-fueled engines are known to*
- 6 *cause cancer. A landmark study conducted by the South Coast*
- 7 *Air Quality Management District, entitled the "Multiple Air*
- 8 *Toxics Exposure Study II," determined that over 70 percent of*
- 9 *the cancer risk from air pollution in the South Coast Air Basin is*

1 *attributable to diesel engine exhaust. The State Air Resources*
2 *Board has made the same finding relative to the entire state.*

3 *(c) Diesel engine exhaust is a significant source of particulate*
4 *matter (PM) emissions. Diesel PM is linked to asthma and other*
5 *respiratory diseases, and to premature death.*

6 *(d) Diesel exhaust is also a significant source of emissions of*
7 *oxides of nitrogen (NOx), which combine with sunlight to create*
8 *ground level ozone, or smog. Exposure to smog has recently been*
9 *connected with decreased lung function growth in children.*

10 *(e) The State Air Resources Board recently estimated that over*
11 *the next 15 years polluting activity from operations at*
12 *California's ports and associated international goods movement*
13 *will have an aggregate health impact equivalent to*
14 *approximately seventy billion dollars (\$70,000,000,000) in*
15 *present value dollars. According to that same study, the state*
16 *board estimated annual health costs attributable to operations at*
17 *ports and international goods movement of approximately six*
18 *billion dollars (\$6,000,000,000) related to premature deaths, ten*
19 *million dollars (\$10,000,000) related to hospital admissions for*
20 *respiratory causes, one million dollars (\$1,000,000) related to*
21 *asthma attacks, twenty-three million (\$23,000,000) related to*
22 *work loss days, fifty-three million (\$53,000,000) related to*
23 *restricted activity days, and twenty-eight million (\$28,000,000)*
24 *related to school absence days.*

25 *(f) California's ports are largely located in low-income*
26 *communities where members of the population are on welfare or*
27 *other public assistance. Accordingly, the State of California is*
28 *responsible for a considerable portion of these growing*
29 *port-related health care costs.*

30 *(g) In addition, the State of California and its political*
31 *subdivisions are required, under the federal Clean Air Act, to*
32 *reach and maintain attainment with national ambient air quality*
33 *standards. Many regions of California are not in attainment with*
34 *these standards, including, but not limited to, the South Coast Air*
35 *Basin and the San Joaquin Valley Air Basin, which have the*
36 *worst air quality in the nation. Further, many regions are in*
37 *danger of failing to meet the federal ambient air quality*
38 *standards by the dates required by the federal Clean Air Act. If a*
39 *region fails to reach attainment by the applicable deadlines, its*
40 *residents will continue to be exposed to severe health risks, and*

1 *the state risks the loss of billions of dollars in federal*
2 *transportation funds and other potential sanctions.*

3 *(h) Further, where lessees do not pay the costs of mitigating*
4 *air pollution from their operations at marine ports, the State of*
5 *California must cover these substantial expenses in order to*
6 *reduce health costs and achieve and maintain attainment with the*
7 *federal standards. For example, the Port of Los Angeles will pay*
8 *approximately sixty million dollars (\$60,000,000) over a*
9 *five-year period to clean up air pollution and other impacts from*
10 *a terminal leased to China Shipping. Because all marine port*
11 *assets, including revenues, are held in trust for the State and the*
12 *people of California, the State has an interest in conducting its*
13 *business operations in such a way as to reduce or eliminate these*
14 *expenses.*

15 *(i) Port air pollution is a systematic and statewide problem in*
16 *that all marine ports are a source of toxic PM pollution, and thus*
17 *of significant health costs to the state, regardless of the*
18 *attainment status of the region in which they are located.*

19 *SEC. 2. Section 40724.8 is added to the Health and Safety*
20 *Code, to read:*

21 *40724.8. (a) As used in this section, the following terms have*
22 *the following meanings, unless the context clearly requires*
23 *otherwise:*

24 *(1) “Best available control technology” or “BACT” means the*
25 *most stringent emission limitation or control technique that*
26 *meets one of the following criteria:*

27 *(A) The emission limitation or control technique has been*
28 *achieved in practice for the category or class of source.*

29 *(B) The emission limitation or control technique is contained*
30 *in any state implementation plan approved by the United States*
31 *Environmental Protection Agency for the category or class of*
32 *source. A specific limitation or control technique shall not apply*
33 *if the owner or operator of the proposed source demonstrates to*
34 *the satisfaction of the executive officer of the applicable air*
35 *pollution control district, or to the state board, or to a designee,*
36 *that the limitation or control technique is not presently*
37 *achievable.*

38 *(C) Any other emission limitation or control technique, found*
39 *by the executive officer of the applicable district or the state*
40 *board, or by a designee, to be technologically feasible for that*

1 *class or category of source or for a specific source, and cost*
2 *effective compared to measures as listed in the air quality*
3 *management plan or rules adopted by the district board.*

4 (2) “Significantly renegotiated lease” means any
5 renegotiation or change to a lease to which a marine port, whose
6 land is held in trust for the people of California under California
7 tidelands trust law, has entered into with any entity to lease any
8 part of port property or right of way.

9 (b) All marine ports whose land is held in trust for the people
10 of California under California tidelands trust law shall require
11 that any new or significantly renegotiated lease existing at these
12 ports include as a condition that the lessee use BACT to reduce
13 PM and NOx emissions from all of the following:

14 (1) Ocean-going vessels, including, but not limited to, oil
15 tankers, container ships and cruise ships.

16 (2) Harbor craft.

17 (3) Cargo handling equipment.

18 (4) On-road heavy-duty vehicles.

19 (5) Locomotives that operate at or service the leased property.

20 (c) All marine ports whose land is held in trust for the people
21 of California under California tidelands trust law shall require
22 the lessee to comply with subdivision (b) for all sources in
23 subdivision (b) owned, operated, leased, or otherwise used at the
24 marine port by the lessee and by requiring the same BACT
25 requirements in all the lessees’ leases or contracts with entities
26 that own or operate any sources identified in subdivision (b) and
27 use any of the property or right-of-way being leased at the
28 marine port.

29 (d) If, despite compliance with subdivision (b), NOx or PM
30 emissions at a particular terminal continue to increase, the
31 marine port shall require, that any new lease or significantly
32 renegotiated existing lease for that terminal include an express
33 condition that the lessee shall offset any increase with a further
34 reduction in emissions of the same pollutant from operations at
35 the leased property or from other emissions sources at the
36 marine port that are not otherwise required by this section to be
37 reduced through the use of BACT.

38 (e) On or before June 1, 2007, the state board shall provide
39 guidance to each port and its lessees regarding what constitutes
40 BACT by developing BACT guidelines relating to PM and NOx

1 *emissions from the pollution sources listed in subdivision (b). In*
2 *addition, the state board shall provide further guidance by*
3 *identifying those measures that constitute BACT for each source.*
4 *Every year thereafter, the state board shall update its BACT*
5 *guidelines and measures for each source category.*

6 ~~SECTION 1. The Legislature hereby finds and declares all of~~
7 ~~the following:~~

8 ~~(a) Air pollutants from diesel engines at marine ports can~~
9 ~~significantly affect human health.~~

10 ~~(b) Exhaust fumes from diesel-fueled engines are known to~~
11 ~~cause cancer. A landmark study conducted by the South Coast~~
12 ~~Air Quality Management District, entitled the "Multiple Air~~
13 ~~Toxics Exposure Study II," determined that over 70 percent of~~
14 ~~the cancer risk from air pollution in the South Coast Air Basin is~~
15 ~~attributable to diesel engine exhaust. The State Air Resources~~
16 ~~Board has made the same finding relative to the entire state.~~

17 ~~(c) Diesel engine exhaust is a significant source of particulate~~
18 ~~matter (PM) emissions. Diesel PM is linked to asthma and other~~
19 ~~respiratory diseases, and to premature death.~~

20 ~~(d) Diesel exhaust is also a significant source of emissions of~~
21 ~~oxides of nitrogen (NOx), which combine with sunlight to create~~
22 ~~ground-level ozone, or smog. Exposure to smog has recently~~
23 ~~been connected with decreased lung function growth in children.~~

24 ~~(e) Many regions of California are not in attainment with~~
25 ~~federal ambient air quality standards for ozone and PM,~~
26 ~~including, but not limited to, the South Coast Air Basin and the~~
27 ~~San Joaquin Valley Air Basin, which have the worst air quality in~~
28 ~~the nation. Further, many of these regions are in danger of failing~~
29 ~~to meet the federal ambient air quality standards by the dates~~
30 ~~required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et~~
31 ~~seq.). If these regions fail to reach attainment by the applicable~~
32 ~~deadlines, their residents will continue to be exposed to severe~~
33 ~~health risks, and the regions risk the loss of billions of dollars in~~
34 ~~federal transportation funds and other potential sanctions.~~

35 ~~SEC. 2. Section 40724.8 is added to the Health and Safety~~
36 ~~Code, to read:~~

37 ~~40724.8. (a) As used in this section, the following terms~~
38 ~~have the following meanings, unless the context clearly requires~~
39 ~~otherwise:~~

1 (1) ~~“Best available control technology” or “BACT” means the~~
2 ~~most stringent emission limitation or control technique that meets~~
3 ~~one of the following criteria:~~

4 ~~(A) The emission limitation or control technique has been~~
5 ~~achieved in practice for the category or class of source.~~

6 ~~(B) The emission limitation or control technique is contained~~
7 ~~in any state implementation plan approved by the United States~~
8 ~~Environmental Protection Agency for the category or class of~~
9 ~~source. A specific limitation or control technique shall not apply~~
10 ~~if the owner or operator of the proposed source demonstrates to~~
11 ~~the satisfaction of the executive officer of the applicable air~~
12 ~~pollution control district or the state board, or a designee, that the~~
13 ~~limitation or control technique is not presently achievable.~~

14 ~~(C) Any other emission limitation or control technique, found~~
15 ~~by the executive officer of the applicable district or the state~~
16 ~~board, or a designee, to be technologically feasible for that class~~
17 ~~or category of source or for a specific source, and costeffective~~
18 ~~compared to measures as listed in the air quality management~~
19 ~~plan or rules adopted by the district board.~~

20 (2) ~~“Significantly renegotiated” means a renegotiation of a~~
21 ~~lease to which a marine port is a part of that results in any of the~~
22 ~~following:~~

23 ~~(A) A two percent or greater expansion of acreage for terminal~~
24 ~~or storage use.~~

25 ~~(B) A two percent or greater increase in TEU.~~

26 ~~(C) A purchase of 10 or more pieces of yard equipment,~~
27 ~~including yard tractors, top picks, side picks, rubber tire gantries,~~
28 ~~and all other cargo handling equipment.~~

29 ~~(D) A renegotiation or extension of the lease term.~~

30 ~~(E) An adjustment of the compensation per TEU in the lease.~~

31 (3) ~~“Twenty-foot equivalent unit” or “TEU” means a~~
32 ~~twenty-foot cargo container.~~

33 ~~(b) All marine ports shall require as an express condition of~~
34 ~~any approved new lease or significantly renegotiated existing~~
35 ~~lease that the lessee use BACT to reduce PM and NOx emissions~~
36 ~~from all of the following:~~

37 ~~(1) Ocean-going vessels.~~

38 ~~(2) Harbor craft.~~

39 ~~(3) Cargo handling equipment.~~

40 ~~(4) On-road heavy-duty vehicles.~~

1 ~~(5) Locomotives that operate at or service the leased property.~~

2 ~~(c) If, despite compliance with subdivision (b), NOx or PM~~
3 ~~emissions at a marine port continue to increase, the marine port~~
4 ~~shall require as an express condition of the lease that the lessee~~
5 ~~offset any increase with a further reduction in emissions of the~~
6 ~~same pollutant from operations at the leased property or from~~
7 ~~other emissions sources at the marine port that are not otherwise~~
8 ~~required by this section to be reduced through the use of BACT.~~

9 ~~(d) On or before June 1, 2007, each district having jurisdiction~~
10 ~~over the area in which a marine port resides shall develop and~~
11 ~~publish, in consultation with state board, BACT guidelines aimed~~
12 ~~at reducing PM and NOx emissions from the pollution sources~~
13 ~~listed in subdivision (b), and determine what measures constitute~~
14 ~~BACT for each source. Every year thereafter, each district shall,~~
15 ~~in consultation with the state board, update its BACT~~
16 ~~determinations for each source category. Upon adoption of any~~
17 ~~BACT determination by a district, the district shall immediately~~
18 ~~submit the determination to the state board for approval. The~~
19 ~~state board shall take action upon the BACT determination~~
20 ~~within 60 days from the date of submission. BACT~~
21 ~~determinations shall become effective on either of the following:~~

22 ~~(1) Upon approval by the state board with a finding that the~~
23 ~~determination meets the requirements for BACT.~~

24 ~~(2) Sixty days after the date of submittal of the determination~~
25 ~~to the state board, if no action is taken by the state board on the~~
26 ~~BACT determination.~~

27 SEC. 3. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.